Supreme Court, U.S.
FILED

(1) 96 159 JUL 3 1 1996

No. OFFICE OF THE CLERK

In The

Supreme Court of the United States

October Term, 1995

SALVATORE A. WILLIAMS, a/k/a "Sonny",

Petitioner,

vs.

UNITED STATES OF AMERICA,

Respondent.

Petition for Writ of Certiorari to the United States Court of Appeals for the Third Circuit

PETITION FOR WRIT OF CERTIORARI

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33 pp

QUESTIONS PRESENTED FOR REVIEW

1. Whether a facially ambiguous order of a state court authorizing electronic surveillance should be interpreted liberally to allow the admission of evidence obtained thereunder in a federal court prosecution for offenses allegedly arising out of evidence obtained from the interception?

2. Whether the Fourth Amendment to the United States Constitution and the federal statutes authorizing electronic surveillance, Title 18, United States Code, § 2510, *et seq.*, require that an order which is (at best) facially ambiguous be interpreted broadly so as to allow the admission of evidence obtained thereunder or whether such order must be strictly construed against the drafting party (the government) to insure the protection of personal privacy?

LIST OF PARTIES

The complete list of Defendants in the underlying case (Criminal Case No.: 95-3529, in the United States Court of Appeals for the Third Circuit) is as follows:

Salvatore C. Williams, a/k/a "Sal";

Adolph Williams, a/k/a "Junior";

Eugene Williams;

Salvatore A. Williams, a/k/a "Sonny";

Phyllis Caligiuri;

Joanne S. Williams;

Antoinette M. Depofi, a/k/a "Babe".

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The Petitioner, Salvatore A. Williams, a/k/a "Sonny", respectfully prays that a Writ of Certiorari issue to review the Judgment and Opinion of the United States Court of Appeals for the Third Circuit which reversed the Judgment of the District Court which had suppressed evidence of a wire interception authorized under the laws of the Commonwealth of Pennsylvania.

OPINIONS BELOW

The United States District Court for the Western District of Pennsylvania, the Honorable Alan N. Bloch, presiding, suppressed evidence to be tendered by the United States in a trial of the defendant and others on charges arising out of a state court authorized wire interception. The District Court did not publish an opinion regarding the matter. The docket entry and the portion of the transcript of the pre-trial suppression hearing in which the ruling was made are attached as Appendix C (7a). The United States Court of Appeals for the Third Circuit, per Opinion and Order entered May 20, 1996, reversed the judgment of the District Court upon appeal by the United States. Such Opinion and Order is attached as Appendix B (3a). The United States Court of Appeals for the Third Circuit thereafter denied the Petitioner's application for reargument and rehearing in banc per Order entered June 12, 1996. *See* Appendix A (1a).

STATEMENT OF JURISDICTION

The District Court had jurisdiction over this matter pursuant to 18 U.S.C. § 3231. The Court of Appeals had jurisdiction pursuant to 18 U.S.C. § 3731 and this Honorable Court has jurisdiction pursuant to 18 U.S.C. § 1254(1) and Supreme Court Rule 13.

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

The text of the Fourth Amendment to the United States Constitution is attached hereto as Appendix D (11a). The provision of 18 U.S.C. §§ 2516(2) and 2518(4) and (5) are attached as Appendix D (12a-14a). The provisions of the Pennsylvania Wiretap Statute, 18 Pa. C.S. § 5712(a) and (b), are attached as Appendix D (15a-18a).

STATEMENT OF THE CASE

The factual context of the issue presented on appeal is unique but may be stated briefly.

On June 26, 1991, the District Attorney of Allegheny County, Pennsylvania applied to the Superior Court of Pennsylvania for an Order authorizing electronic surveillance of rooms located at a structure on the second floor at 1420 Fifth Avenue in Pittsburgh, Pennsylvania. This application was made pursuant to the Pennsylvania Wiretapping and Electronic Surveillance Control Act, 18 Pa. C.S. § 5701, *et seq.* The ostensible purpose of this electronic surveillance was to gather evidence of the operation of an illegal gambling business.

Subsequently, the State relinquished its prosecution to the federal government which indicted the Petitioner and others under the Federal Gambling Statute, 18 U.S.C. § 1955, and related offenses. As primary support for its case, the United States intended to offer evidence obtained from the electronic surveillance which had been authorized by an Order of the Honorable Justin M. Johnson of the Superior Court of Pennsylvania on June26, 1991.

Upon pretrial application to suppress the evidence filed by the Defendants, the Honorable Alan N. Bloch, United States

District Court, granted the motion, suppressing all interceptions which occurred ten (10) days after the Order of June 26, 1991. In so doing, the District Court declared that it vas simply reading the text of the Order authorizing the interception as it had been entered by the Superior Court. That Order was as follows:

> Such interceptions shall not automatically terminate when the type of communications described above have been first obtained, but shall continue until communications are intercepted which reveal the manner in which the above named persons and others yet unknown participate in conducting of the above described illegal activities, and which reveal the identities of confederates, their places and manner of operation, and the nature of the illegal enterprise or conspiracy involved or for a period of thirty (30) days from the day on which the investigative or law enforcement officers or agency first begins to conduct an interception under the Court's Order, or ten (10) days after the Order is entered, whichever is earlier.

With respect to this Order, the District Court ruled that regardless of what the court may have intended to authorize under the terms of this Order, what it did authorize was interception for a period not to exceed ten days after the Order was entered. The District Court noted:

> Mr. Teitlebaum [the Assistant United States Attorney in charge of the prosecution], you read that Court order. There is not much doubt to it. Now, you seem to be arguing that

> that's not what the Court meant, and that might very well be true, but we have to look at the Court order, not what the Court might have meant.
>
> First of all, we all know that the order was probably prepared by the District Attorney and not by the Court at all. But that's the order that the judge signed. You can't help, you can't help in reading that order determine that there were three options that would terminate the authorization to intercept; one being when enough information had been revealed, and I don't really think that's at issue here, the second being thirty days from the day the interception began, and the third, or ten days after the order is entered, whichever is earlier.
>
> It appears to me clearly that the authorization and the ten days after ended ten days after the order was issued, and any interception after that time was outside the permission given by the court and should be suppressed.

Pretrial Hearing Transcript, page 13.

While the United States argued that the Order was, at best, ambiguous and should be interpreted to mean that at least a period of thirty (30) days was authorized, the District Court repeatedly held that the Order was clear. *See* Pretrial Hearing Transcript, page 14 ("The order is not unclear at all. The order is very clear."); page17 ("you have to interpret the order strictly"); page 23 ("I don't think there's any doubt, if you read the order,

that's the only conclusion you could come to"); page 25 ("Anybody who read the order would know that it terminated in ten days").

The United States appealed this decision to the United States Court of Appeals for the Third Circuit, certifying that the evidence suppressed was substantial proof of a fact material in the proceeding, pursuant to 18 U.S.C. § 3731. In an Opinion and Order dated May 20, 1996 (3a-6a), a panel of the United States Court of Appeals for the Third Circuit reversed the judgment of the District Court and remanded the matter for further proceedings in the trial Court. An application for rehearing was denied on June 12, 1996 (1a-2a).

REASONS FOR GRANTING THE WRIT

The decision of the panel of the United States Court of Appeals for the Third Circuit which liberally interprets the Order in question to be in conformity with 18 Pa. C.S. § 5712(b) (and therefore admissible in federal court under 18 Pa. C.S. § 2516(2)) is contrary to a consistent tradition of this Honorable Court and lower courts in requiring a strict interpretation of orders authorizing electronic surveillance. The opinion of the Court of Appeals, which cites no authority, adopts a liberal interpretive view of the Order of the Superior Court of Pennsylvania but such an interpretation is improper when applied to a matter dealing with a surreptitious interception of otherwise private conversations. To accomplish this purpose, the Court of Appeals had to construe this order contrary to its literal meaning and in a way designed to give it an interpretation in the light most favorable to the drafting party, the government. Such is an entirely inappropriate mode of statutory interpretation of court orders arising out of ex-parte proceedings.

While the drafters of the Order in question may have been

trying to construct it in terms of the language expressed in § 5712(b) of Title 18, Pa. C.S., they did not do so. They blundered in drafting an Order which, as the District Court properly perceived, can only be read to mean that the authorization ends ten days after it begins.

The Panel Opinion in this case seeks to save the wire interception from otherwise inevitable suppression by reading it contrary to its literal meaning and in a way which the Panel deems to be "reasonable" (Appendix B, 4a-5a) giving to the Order an interpretation which it anticipates the state court "contemplated". *Id.*

From the time courts first began to consider the implications of electronic surveillance, this Honorable Court perceived that such surveillance, involving as it does a broad intrusion on privacy, had to be carefully limited and the requirements of the Fourth Amendment strictly applied. *Berger v. New York*, 388 U.S. 41, 51-56 (1967). The *Berger* Court, quoting favorably from *Osborn v. United States*, 385 U.S. 323 (1966), indicated that the nature of such electronic surveillance imposes a heavier responsibility on a court for supervising the appropriateness of such orders than is present in other types of cases under the Fourth Amendment. *Id.* at 56. *See also Katz v. United States*, 389 U.S. 347 (1967). In construing provisions of the federal statute which authorizes wire interceptions, this Honorable Court has held as follows:

> Congress legislated in considerable detail . . . and evinced the clear intent to made doubly sure that the statutory authority be used with restraint and only where the circumstances warrant the surreptitious interception of wire and oral communications.

United States v. Giordano, 416 U.S. 505, 515 (1974). *See also United States v. Donovan*, 429 U.S. 413, 440 (1977).

Courts in the Third Circuit and others have echoed the need for the strict application of the statutory scheme here. *See United States v. Eastman*, 465 F.2d 1057 (3rd Cir. 1972); *Kratz v. Kratz*, 477 Fed. Supp. 463 (E.D. Pa. 1979); *United States v. Narducci*, 341 Fed. Supp. 1107 (E.D. Pa. 1972) (Becker, J.), *aff'd*, 500 F.2d 1401 (3rd Cir. 1974); *United States v. Alfano*, 838 F.2d 158 (6th Cir. 1988); *United States v. Civella*, 533 F.2d 1395, 1400 (8th Cir. 1976); *United States v. Brodson*, 528 F.2d 214, 216 (7th Cir. 1975); *United States v. King*, 478 F.2d 494, 506 (9th Cir. 1973); *United States v. Kalustian*, 529 F.2d 585, 589 (9th Cir. 1976) and *In re Evan*, 452 F.2d 1239, 1243 (D.C. Cir. 1971). In *United States v. Narducci, supra*, Judge Becker observed that:

> A reading of Title III and its legislative history leaves no doubt that Congress intended to prohibit all wire tapping and electronic surveillance except by law enforcement officials investigating certain enumerated crimes and under a carefully circumscribed and strictly controlled procedure.

Id. at 1109 (Footnote omitted).

To be sure, the courts of Pennsylvania have also demanded a strict construction of their own version of the wiretapping statute and have required that prosecutors "diligently follow the strict requirements of the act". *Commonwealth v. Hashem*, 526 Pa. 199, 584 A.2d 1378, 1382 (1991); *Boettger v. Miklich*, 534 Pa. 581, 633 A.2d 1146, 1148-1149 (1993).

In contrast to this substantial line of precedent, the opinion

of the Panel of the United States Court of Appeals for the Third Circuit both disregards the literal language of the order and liberally interprets it in a fashion designed to give the greatest possible deference to the admission of the evidence. Such a stance with respect to the interpretation of orders authorizing electronic surveillance is unprecedented.

CONCLUSION

This Honorable Court is prayed to accept this matter for review and to reverse the decision of the United States Court of Appeals for the Third Circuit. By doing so, this Honorable Court will affirm the importance of the strict interpretation of orders that authorize the surreptitious interception of otherwise private conversations among citizens. The statutory scheme under both the federal and state statutes seek to protect privacy rights in the first instance and to authorize such interceptions only under strictly controlled procedures and precisely drawn orders. To permit this decision to stand is to allow further erosion of privacy rights which, in this instance, are protected both by the Fourth Amendment and by federal and state statutes which are otherwise subject to interpretation here.

Accordingly, it is prayed that a Writ of Certiorari issue to the United States Court of Appeals for the Third Circuit to review its judgment in this case.

Respectfully submitted,

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APPENDIX A — ORDER OF THE UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT DATED JUNE 12, 1996

UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

NO. 95-3529

UNITED STATES OF AMERICA,

Appellant

v.

SALVATORE C. WILLIAMS, a/k/a "Sal"; ADOLPH WILLIAMS, a/k/a "Junior"; EUGENE WILLIAMS; SALVATORE A. WILLIAMS, a/k/a "Sonny" PHYLISS CALIGIURI; JOANNE S. WILLIAMS; ANTOINETTE M. DEPOFI, a/k/a "Babe"

On Appeal from the United States District Court
for the Western District of Pennsylvania
(D.C. Crim. No. 95-00092)

SUR PETITION FOR REHEARING

BEFORE SLOVITER, *Chief Judge,* and BECKER, STAPLETON, MANSMANN, GREENBERG, SCIRICA, COWEN, NYGAARD, ALITO, ROTH, LEWIS, MCKEE, and SAROKIN, *Circuit Judges*

The petition for rehearing filed by the appellees, Salvatore A. Williams, Salvatore C. Williams, and Adolph Williams, in the above captioned matter having been submitted to the judges who

Appendix A

participated in the decision of this court and to all the other available circuit judges of the court in regular active service, and no judge who concurred in the decision having asked for rehearing, and a majority of the circuit judges of the circuit in regular active service not having voted for rehearing by the court in bane, the petition for rehearing is denied.

BY THE COURT:

s/

Circuit Judge

DATED: JUNE 12, 1996

cpm/cc: PJB
BAA
BAC
JAJ
TAL RR
JSW

APPENDIX B — OPINION OF THE UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT FILED MAY 20, 1996

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

NO. 95-3529

UNITED STATES OF AMERICA,

Appellant

v.

SALVATORE C. WILLIAMS, a/k/a "Sal"; ADOLPH WILLIAMS, a/k/a "Junior"; EUGENE WILLIAMS; SALVATORE A. WILLIAMS, a/k/a, "Sonny"; PHYLLIS CALIGIURI; JOANNE S. WILLIAMS; ANTOINETTE M. DEPOFI, a/k/a "Babe"

On Appeal from the United States District Court
for the Western District of Pennsylvania
(D.C. Crim. No. 95-00092)
District Judge: Honorable Alan N. Bloch

Submitted under Third Circuit LAR 34.1 (a)
May 9, 1996

BEFORE: GREENBURG, ALITO, and MCKEE,
Circuit Judges

(Filed: May 20, 1996)

Appendix B

OPINION OF THE COURT

GREENBERG, *Circuit Judge.*

The United States appeals from an order of suppression entered on September 18, 1995, in this gambling and tax evasion case. The district court order suppressed oral interceptions made by state officers pursuant to two state court orders of June 26, 1991, which provided that:

> Such interceptions shall not automatically terminate when the type of communications described above have been first obtained, but shall continue until communications are intercepted which reveal the manner in which the above named persons and others yet unknown participate in the conducting of the above described illegal activities, and which reveal the identities of confederates, their places and manner of operation, and the nature of the illegal enterprise or conspiracy involved or for a period of thirty (30) days from the day on which the investigative or law enforcement officers or agency first begins to conduct an interception under the Court's Order, or ten (10) days after the Order is entered, whichever is earlier.

The district court construed this order as allowing the interceptions to extend no longer than ten days after entry of the state court's order. Thus, the district court treated the ten days as relating to the length of time that interceptions could be conducted rather than to the time from which the interceptions

could extend. We have jurisdiction under 18 U.S.C. Section 3731 and exercise plenary review.

We will reverse. The orders were issued in recognition of the time limits in 18 Pa. Cons. Stat. Ann. Section 5712 (b) (Supp. 1995), which provides in pertinent part: "No order entered under this section shall authorize the interception of wire, electronic or oral communications for any period exceeding 30 days. The 30-day period begins on the day on which the investigative or law enforcement officers or agency first begins to conduct an interception under the order, or ten days after the order is entered, whichever is earlier." The language of the orders largely tracks the language of the statute and precisely tracks it with respect to the ten-day provision which follows the 30-day limitation on the period of interception. In the circumstances, it is evident that the 30-day and ten-day provisions describe different things. Thus, the 30- day provision relates to how long an interception may continue and the ten-day provision relates to when the 30-day period, at the outside, begins to run.

No other reasonable construction of the order is possible because if the ten-day period is the outside period during which the state court authorized interceptions may continue from the date of the entry of its order, that period always will expire prior to the 30-day period. Yet the state court contemplated that an authorized interception could continue for 30 days and that the 30-day period could expire before the ten-day period. In the circumstances, it is clear that the state court contemplated that the ten-day period measured from the date of the entry of the state court order would be compared to the time when the law enforcement officers or agency began to make the interception. Then the 30 days was to be measured from the earlier of the two periods. Thus, an interception started five days from the entry of

the state court order could continue for 30 days or until 35 days after the entry of the order. On the other hand, an interception commenced 15 days after the entry of the state court order could continue for 25 days or until 40 days from the entry of the state court order.

In view of the aforesaid, we will reverse the district court's order of September 18, 1995, and will remand the case to the district court for further proceedings consistent with this opinion.

TO THE CLERK:

Please file the foregoing opinion.

s/

Circuit Judge

DATED:

APPENDIX C — DOCKET ENTRY AND PORTION OF TRANSCRIPT OF THE PRE-TRIAL SUPPRESSION HEARING DATED NOVEMBER 8, 1995

Proceedings include all events. APPEAL
2:95cr92-ALL USA v. WILLIAMS, et al

9/15/95 — ORAL ORDER dated 9/15/95 as to SALVATORE C. WILLIAMS, ADOLPH WILLIAMS, EUGENE WILLIAMS, SALVATORE A. WILLIAMS, PHYLLIS CALIGIURI, JOANNE S. WILLIAMS, ANTOINETTE M. DEPOFI granting [28-1] motion for Joinder in the Motions of Co. Defts. As to SALVATORE C. WILLIAMS (1), ADOLPH WILLIAMS (2) granting [38-1] motion for Joinder in the Motion of Co-defts. As to ANTOINETTE M. DEPOFI (7) granting [41-1] motion to adopt Motion of Other Defendants. As to PHYLLIS CALIGIURI (5) granting [42-1] motion to Join in Pretrial Motions of Other Defendants as to EUGENE WILLIAMS (3) granting [44-1] motion to Join Motion of Other Defendants as to SALVATORE A. WILLIAMS (4), granting [44-2] motion to Suppress Court authorized interceptions of wire and oral communication and video surveillance as to SALVATORE A. WILLIAMS (4), granting [44-3] motion for Discovery as to SALVATORE A. WILLIAMS (4), granting [44-4] motion for notice pursuant to Rule 404 (b) as to SALVATORE A. WILLIAMS (4), granting [44-5] motion for notice pursuant to Rule 12 (d) F.C.R.P. as to SALVATORE A. WILLIAMS (4) granting [48-1] motion to adopt Motion of Other Defendants as to JOANNE S. WILLIAMS (6) denying [43-1] support brief as to EUGENE WILLIAMS (3) denying [29-1] motion for Bill of Particulars as to SALVATORE C. WILLIAMS (1), ADOLPH WILLIAMS (2) denying [40-1] motion for Bill of Particulars as to PHYLLIS CALIGIURI (5), DENYING [40-2] motion for Discovery as to PHYLLIS CALIGIURI (5) granting in part, denying in part [33-1] motion for Disclosure of ofm Grants of Immunity,

Appendix C

Promised of Leniency, Plea Bargain, Agreements and other Exculpatory Information. As to SALVATORE C. WILLIAMS (1), ADOLPH WILLIAMS (2) granting in part, denying in part [31-1] motion to Suppress Video surveillance, Oral Interceptions and Physical Searches and the Direct and Indirect use thereof.

—

As to SALVATORE C. WILLIAMS (1), ADOLPH WILLIAMS (2), denying [35-1] motion to Dismiss Counts 20 and 21 as to ADOLPH WILLIAMS (2) denying [46-1] motion to Dismiss Indictment as to SALVATORE C. WILLIAMS (1) Govt request deferral of turnover of Brady Material until resolution of surveillance timing issue Defts do Not Contest, defts Exhibits 1 and 2 introduced, date of trial put off to allow Govt Appeal. (Entered by Judge Alan N. Bloch) (WITH DOCUMENT NUMBER 57) (aen) [Entry date 09/18/95]

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Appendix C

MR. JOHNSON: These cases are in the brief involving the search of 274 Foxcroft, but there's another one here, U.S. vs. Weber, that may be helpful; Kow and Weber. Weber is 923 F.2d., 1338, 1990 case.

THE COURT: Okay. We're going to take a recess, and I hope it isn't too long, but we're going to look at this.

(Court recessed at 11:30 o'clock a.m.)

* * *

(Court reconvened at 12:12 o'clock p.m.).

THE COURT: Where there is a facially invalid order and the law enforcement officers acted reasonably and complied with the core statutory requirements, the United States vs. Leon requires that suppression be denied. But here we have a facially valid order.

Police officers cannot be objectively reasonable and error free if they violate that order. United States vs. Moore, 41 F.2d. 370, Eight Circuit case 1994.

Therefore, the motion to suppress is granted as to those interceptions that took place after the ten-day period.

Now, we have a, a renewal — an extension order that was signed by the Judge at a later date which I believe used the same language.

MR. TEITELBAUM: Your Honor, if I may, I think the — just in all honesty to the Court, we would not be able to argue that

the basis of the second affidavit, the extension affidavit, was not predicated on conversations which were intercepted during that period subsequent to the ten days, meaning day 21 through 30. So, my guess would be that if the Court is ordering suppression of the conversations, then there is no good — and there is no good faith, I would presume that that meant those conversations couldn't form the basis for the extension application.

THE COURT: If those — yeah. I didn't know what the basis for the extension was, but if that was the basis of the extension, I would agree.

MR. TEITELBAUM: So, I think de facto, by suppressing days 11 through 30, automatically suppresses the second one.

THE COURT: all right.

MR. JOHNSON: Yes.

THE COURT: We have — I think that was NO. 3 of that motion.

MR. JOHNSON: It was, Your Honor.

THE COURT: 4 is denied. 5 is denied. 6 is denied. 7 is denied. 8 is denied. 9 is denied.

MR. JOHNSON: Which was 9, Your Honor?

THE COURT: 9 was —

APPENDIX D — RELEVANT CONSTITUTIONAL PROVISION AND STATUTES INVOLVED

AMENDMENT 4

The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

Appendix D

THE PROVISION OF TITLE 18, UNITED STATES CODE, SECTION 2516 (2) and SECTION 2518 (4) and (5)

SECTION 2516 (2):

The principal prosecuting attorney of any State, or the principal prosecuting attorney of any political subdivision thereof, if such attorney is authorized by a statute of that State to make application to a State court judge of competent jurisdiction for an order authorizing or approving the interception of wire, oral, or electronic communications, may apply to such judge for, and such judge may grant in conformity with section 2518 of this chapter and with the applicable State statute an order authorizing, or approving the interception of wire, oral, or electronic communications by investigative or law enforcement officers having responsibility for the investigation of the offense as to which the application is made, when such interception may provide or has provided evidence of the commission of the offense of murder, kidnapping, gambling, robbery, bribery, extortion, or dealing in narcotic drugs, marijuana or other dangerous drugs, or other crime dangerous to life, limb, or property, and punishable by imprisonment for more that one year, designated in any applicable State statute authorizing such interception, or any conspiracy to commit any of the foregoing offenses.

SECTION 2518 (4) and (5):

(4) Each order authorizing or approving the interception of any wire, oral, or electronic communication under this chapter [18 USCS Sections 2510 et seq.] shall specify —

(a) the identity of the person, if known, whose communications are to be intercepted;

Appendix D

(b) the nature and location of the communications facilities as to which, or the place where, authority to intercept is granted;

(c) a particular description of the type of communication sought to be intercepted, and a statement of the particular offense to which it relates;

(d) the identity of the agency authorized to intercept the communications, and of the person authorizing the application; and

(e) the period of time during which such interception is authorized, including a statement as to whether or not the interception shall automatically terminate when the described communication has been first obtained.

An order authorizing the interception of a wire, oral, or electronic communication under this chapter [18 USCS Sections 2510 et seq.] shall, upon request of the applicant, direct that a provider of wire or electronic communication service, landlord, custodian or other person shall furnish the applicant forthwith all information, facilities, and technical assistance necessary to accomplish the interception unobtrusively and with a minimum of interference with the services that such service provider, landlord, custodian, or person is according the person whose communications are to be intercepted. Any provider of wire or electronic communication service, landlord, custodian or other person furnishing such facilities or technical assistance shall be compensated therefore by the applicant for reasonable expenses incurred in providing such facilities or assistance.

(5) No order entered under this section may authorize or approve the interception of any wire, oral, or electronic

communication for any period longer than is necessary to achieve the objective of the authorization, nor in any event longer than thirty days. Such thirty-day period begins on the earlier of the day on which the investigative or law enforcement officer first begins to conduct an interception under the order or ten days after the order is entered. Extensions of an order may be granted, but only upon application for an extension made in accordance with subsection (1) of this section and the court making the findings required by subsection (3) of this section. The period of extension shall be no longer than the authorizing judge deems necessary to achieve the purposes for which it was granted and in no event for longer than thirty days. Every order and extension thereof shall contain a provision that the authorization to intercept shall be executed as soon as practicable, shall be conducted in such a way as to minimize the interception of communications not otherwise subject to interception under this chapter [18 USCS Section 2510 et seq.], and must terminate upon attainment of the authorized objective, or in any event in thirty days. In the event the intercepted communication is in a code or foreign language, and an expert in that foreign language or code is not reasonably available during the interception period, minimization may be accomplished as soon as practicable after such interception. An interception under this chapter [18 USCS Sections 2510 et seq.] may be conducted in whole or in part by Government personnel, or by an individual operating under a contract with the Government, acting under the supervision of an investigative or law enforcement officer authorized to conduct the interception.

Appendix D

PENNSYLVANIA STATUTES

TITLE 18. CRIMES AND OFFENSES
PART II. DEFINITION OF SPECIFIC OFFENSES
ARTICLE F. OFFENSES AGAINST PUBLIC ORDER AND DECENCY
CHAPTER 57. WIRETAPPING AND ELECTRONIC SURVEILLANCE
SUBCHAPTER B. WIRE, ELECTRONIC OR ORAL COMMUNICATION

18 Pa.C.S. @ 5712 (1995)

@ 5712. Issuance of order and effect

(A) AUTHORIZING ORDERS. — Each order authorizing the interception of any wire, electronic or oral communication shall state the following:

(1) The identity of the investigative or law enforcement officers or agency to whom the authority to intercept wire, electronic or oral communications is given and the name and official identity of the person who made the application.

(2) The identity of, or a particular description of, the person, if known, whose communications are to be intercepted.

(3) The character and location of the particular communication facilities as to which, or the particular place of the communication as to which, authority to intercept is granted.

(4) A particular description of the type of the

communication to be intercepted and a statement of the particular offense to which it relates.

(5) The period of time during which such interception is authorized, including a statement as to whether or not the interception shall automatically terminate when the described communication has been first obtained.

(B) TIME LIMITS. — No order entered under this section shall authorize the interception of any wire, electronic or oral communication for a period of time in excess of that necessary under the circumstances. Every order entered under this section shall require that such interception begin and terminate as soon as practicable and be conducted in such a manner as to minimize or eliminate the interception of such communications not otherwise subject to interception under this chapter by making reasonable efforts, whenever possible, to reduce the hours of interception authorized by said order. In the event the intercepted communication is in a code or foreign language and an expert in that code or foreign language is not reasonably available during the interception period, minimization may be accomplished as soon as practicable after such interception. No order entered under this section shall authorize the interception of wire, electronic or oral communications for any period exceeding 30 days. The 30-day period begins on the day on which the investigative or law enforcement officers or agency first begins to conduct an interception under the order, or ten days after the order is entered, whichever is earlier. Extensions or renewals of such an order may be granted for additional periods of not more than 30 days each. No extension or renewal shall be granted unless an application for it is made in accordance with this section, and the judge makes the findings required by section 5710 (relating to grounds for entry of order).

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(C) RESPONSIBILITY. — The order shall require the Attorney General or the district attorney, or their designees, to be responsible for the supervision of the interception.

(D) PROGRESS REPORTS. — Whenever an order authorizing an interception is entered, the order may require reports to be made to the judge who issued the order showing what progress has been made toward achievement of the authorized objective and the need for continued interception. The reports shall be made at such intervals as the judge may require.

(E) FINAL REPORT. — Whenever an interception is authorized pursuant to this section, a complete written list of names of participants and evidence of offenses discovered, including those not stated in the application for order, shall be filed with the court at the time the authorized interception is terminated.

(F) ASSISTANCE. — An order authorizing the interception of a wire, electronic or oral communication shall, upon request of the applicant, direct that a provider of electronic communication service shall furnish the applicant forthwith all information, facilities and technical assistance necessary to accomplish the interception unobtrusively and with a minimum of interference with the services that such service provider is affording the person whose communications are to be intercepted. The obligation of a provider of electronic communication service under such an order may include but is not limited to conducting an in-progress trace during an interception. Any provider of electronic communication service furnishing such facilities or technical assistance shall be compensated therefor by the applicant for reasonable expenses

incurred in providing the facilities or assistance. The service provider shall be immune from civil and criminal liability for any assistance rendered to the applicant pursuant to this section.

(G) ENTRY BY LAW ENFORCEMENT OFFICERS. — An order authorizing the interception of a wire, electronic or oral communication shall, if requested, authorize the entry of premises or facilities specified in subsection (a)(3), or premises necessary to obtain access to the premises or facilities specified in subsection (a)(3), by the law enforcement officers specified in subsection (a)(1), as often as necessary solely for the purposes of installing, maintaining or removing an electronic, mechanical or other device or devices provided that such entry is reasonably necessary to accomplish the purposes of this chapter and provided that the judge who issues the order shall be notified of the time and method of each such entry prior to entry if practical and, in any case, within 48 hours of entry.